SUPREME COURT, U. S.

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1967.

No. 70.

ALITALIA-LINEE AEREE ITALIANE, S.P.A.,
Petitioner,

JOHN LISI, et al.,
Respondents.

MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE AFTER ORAL ARGUMENT.

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MARION J. BERGUIDO, Individually, MARION J. BERGUIDO, ROBERT G. ROWE and WARREN H. WOODRING, Executors of the Estate of CARLOS BERGUIDO, JR., and JUNE BERGUIDO, JOY BERGUIDO, JILL BERGUIDO and CARLOS BERGUIDO, 3rd by Their Guardian, MARION J. BERGUIDO, Petitioners, respectfully move for leave to file a brief amicus curiae after oral argument in the above captioned action and represent as follows:

1. That they are petitioners in No. 528, October Term, 1967 in this Honorable Court in which action their Petition for Certiorari is presently pending.

2. That oral argument was held on March 11, 1968 and there is presently pending for decision the case of *Alitalia-Linee Aeree Italiane, S. P. A. v. John Lisi, et al.*, October Term, 1967, No. 70.

3. Having been requested by this Court for his views on the *Berguido* Petition for Certiorari, the Solicitor-General, in his brief *amicus curiae,* suggested that the outcome of the *Berguido* Petition for Certiorari should abide the outcome of the *Lisi* case here.

4. Assumedly on this recommendation of the Solicitor-General our Petition for Certiorari in *Berguido* has not been acted upon as yet.

5. We attended and audited the oral argument in *Lisi* which was held on March 11, 1968.

6. Based upon the numerous questions propounded by your Honorable Court, and based upon the answers and statements of both counsel at the oral argument of *Lisi,* we respectfully submit that the very question which is at the heart of the *Berguido* Petition for Certiorari, and the very question which was supposed to be foreign to the *Lisi* case, now occupies a central place in *Lisi*:

What are the legal consequences which flow from a ticket legally inadequate under the Warsaw Convention?

7. Not only is this issue now clearly present in *Lisi* and *Berguido,* but your petitioners are in complete disagreement with the statement of counsel for *Lisi* that the only issue with respect to the adequacy of a Warsaw ticket is whether it is legible or not. Your petitioners believe that in order for a Warsaw ticket to be legally adequate it must not only be clearly and immediately legible, but it must also comply with Chapter II, Article 3(1) of the Warsaw Convention in all other respects. In particular, your petitioners take the position that the ticket must contain the agreed stopping places (Article 3(1)(c)), for the passenger is exposed to in-

creasing risks with each additional landing and take-off. Carlos Berguido was killed at a stopping place which was not on the ticket issued to him. In addition, your petitioners submit that the ticket must specifically point out the drastic limitations which Warsaw imposes on a passenger's rights. Not only was the *Berguido* ticket less legible than the *Lisi* ticket, and not only did it fail to name the agreed stopping place where Berguido was killed, but the *Berguido* ticket gave your petitioner's decedent even less information about the drastic limitations of Warsaw than the *Lisi* ticket did. In fact, the *Berguido* ticket gave no information about any limitations at all.

8. Before the disposition of the Petition for a Writ of Certiorari in what is now No. 70 (*Lisi*) had been ruled upon, your petitioners moved to consolidate their case—No. 528 (*Berguido*) with *Lisi*.

9. Your petitioners' Motion for Consolidation was based on the close connection between what we believed was an important issue in both *Lisi* and *Berguido*, namely, the effect of non-compliance with the ticketing provisions of the Warsaw Convention. We respectfully submit that the oral argument in *Lisi* has fully confirmed our belief.

10. Respondent in *Lisi* opposed our Motion for Consolidation in a brief it filed in *Berguido* on essentially the ground that the issues raised by your petitioners in *Berguido* were foreign to those in *Lisi* where there was allegedly simply the question of legibility of the ticket.

11. Your petitioners' Motion for Consolidation with *Lisi* was denied assumedly for the reason asserted by the respondent in *Lisi*.

12. In our Memorandum in response to the Solicitor-General's Memorandum for the United States as *amicus curiae* in *Berguido* we respectfully suggested at page 3 the following possibilities in the event of an affirmance of *Lisi*:

> "If this Court decides that the *Lisi* ticket is legally inadequate, the trial court in *Lisi* will have to decide whether (1) the trial should proceed on the issue of damages alone—as we contend—; or (2) whether the trial should proceed with the defendant permitted to establish 'that it took all appropriate measures to avoid the injury'—as *Mertens* holds and the Solicitor General contends; (3) or whether the plaintiff in *Lisi* must bear the burden of proving negligence—as the *Berguido* Court of Appeals held."

13. This question, which is now clearly present in *Lisi*, may well be dispositive of *Berguido*, and yet your petitioners in *Berguido* have not been heard on its merits even though they may be bound by the disposition of this question in *Lisi*.

14. We respectfully submit that if all that will be decided in *Lisi* is the issue of the adequacy of the ticket, there is for *Lisi* and numerous other pending and future Warsaw Convention cases as well, the genuine prospect of continued litigation and appeals on the question of the consequences of an inadequate ticket.

15. As matters now stand, neither the question of adequacy of the ticket on grounds other than illegibility nor the consequences of a legally inadequate ticket have been briefed or argued on the merits by the parties which did raise them (your petitioners) while the *Lisi* parties, who disclaimed these issues, have had oral argument on them.

16. That the following important reasons exist for the granting of this motion.

I. Despite the fact that the oral argument of *Lisi* suggested how well-founded was our Motion to Consolidate, your petitioners in *Berguido* have never been given an opportunity to state their position and the reasons therefor on the questions now clearly involved in *Lisi*.

II. Your petitioners are in fundamental disagreement with the construction of Warsaw which both counsel in *Lisi* have presented to your Honorable Court. To grasp just how deep our disagreement is we respectfully refer the Court to pages 9-34 of our Petition For Certiorari in *Berguido*.

III. The questions now before your Honorable Court are large and important enough to merit a full expression of views from all the parties who will be affected by their resolution. Your petitioners in *Berguido* stand in no less a position than the Solicitor General and a host of public and private international air carriers who have been given full opportunity to submit briefs *amici curiae* in *Lisi*.

WHEREFORE, your petitioners respectfully move that their Motion be granted.

Respectfully submitted,

B. NATHANIEL RICHTER,
CHARLES A. LORD,
ARTHUR G. RAYNES,
Attorneys for Petitioners.

Of Counsel:

SEYMOUR I. TOLL